

Instrument prepared by:

**VIRGINIA GAS AND OIL BOARD**

Order recorded under:

**CODE OF VIRGINIA**  
**§ 45.1-361.26****VIRGINIA:****BEFORE THE GAS AND OIL BOARD****APPLICANTS:**Equitable Production Company on behalf of  
Jimmy M. Smith and NRP (Operating) LLC  
on behalf of ACIN LLC.**DOCKET NO.****98-0616-0670-02****RELIEF SOUGHT:****Issuance:** A Supplemental Order for Disbursement of Escrowed Funds**Action:** Amending Prior Orders Affecting Drilling **VC-3169** (703169) **Tract 1**  
(Referenced herein as "the Subject Drilling Unit")**Location:** Dickenson County, Virginia**Action Details:**

- (1) To provide a calculation of funds, Unit Operator has deposited into the Escrow Account for Drilling Unit **VC-3169** (703169) by Tract Subaccounts;
- (2) To provide each applicant, in simple terms, a complete month over month Royalty Accounting of unit production, costs, taxes and proceeds, depicting variables used in the calculation of royalty payments to the unit escrow account.
- (3) To disburse unit funds to the Applicants, in accordance with their Unit Ownership Acreage Interests relative to those funds deposited by the Unit Operator into Subject Drilling Unit's Escrow Subaccount for **VGOB Tract(s) identified in Table 1.**

**REPORT OF THE BOARD****FINDINGS AND ORDER**

1. **Hearing Date and Place:** This matter came on for final hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on July 21, 2009 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA.
2. **Appearances:** James E. Kaiser, Esq. appeared for the Unit Operator; and Sharon M.B. Pigeon, Assistant Attorney General, was present to advise the Board.
3. **Jurisdiction and Notice:** Pursuant to Va. Code §§ 45.1-361.1 *et seq.*, and in particular Va. Code §§ 45.1-361.21 and 45.1-361.22, the Board finds that it has jurisdiction over the establishment and maintenance of an escrow account, with tract subaccounts, for each of the coalbed methane gas drilling units established by the Board through its field rules that are subject to a Board pooling order. Further, the Unit Operator is required to deposit, as applicable, those funds specified in Va. Code § 45.1-361.21.D., 45.1-361.22.A.2, 45.1-361.22.A.3 and 45.1-361.22.A.4 into the applicable escrow tract subaccounts. The Board finds that: (1) while it **does not** have jurisdiction to resolve conflicting claims to the ownership of the Coalbed Methane Gas produced by the Unit Operator from wells located on Subject Drilling Unit, and (2) while it **does not** have jurisdiction to interpret agreements by and between the Gas owners/claimants and/or the Unit Operators or to abridge or contravene the provisions of such agreements, (3) pursuant to Va. Code § 45.1-361.22.A.5, **the Board does have jurisdiction and**

authority to disburse funds from the Escrow Account provided the Board has been provided with a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between the conflicting claimants or an agreement among all claimants owning conflicting estates in the tracts in question or any undivided interest therein.

4. **Prior Proceedings:**

- 4.1. On June 16, 1998, the Board executed its order pooling interests in the Subject Drilling Unit for the production of occluded natural gas produced from coalbeds and rock strata associated therewith (herein "Gas") in accordance with the provisions of Va. Code SS 45.1-361.21 and 45.1-361.22 (herein "Pooling Order"). The Pooling Order was filed with the Clerk of the Circuit Court of Dickenson County on July 6, 1998, Deed Book 336, Page 639-654. The Board executed its Supplemental Order Regarding Elections that was filed with the Clerk on January 4, 1999, Deed Book 341, Page 797-806.
- 4.2 To the extent claims to the Gas were in conflict, pursuant to Va. Code S 45.1-361-22 payments attributable to said conflicting claims were ordered deposited by the Unit Operator into the escrow account established by the Pooling Orders (herein "Escrow Account"). According to the Pooling Orders and testimony, NRP (Operating) LLC (ACIN) was a conflicting claimant in unit Tract 1 with Jimmy M. Smith in the Subject Drilling Unit and became subject to the escrow requirements of the Pooling Order.
- 4.3 The Unit Operator's Miscellaneous Petition regarding Tract 1, a copy of which is attached to and made a part hereof, states under oath that NRP (Operating) LLC (ACIN) and the Applicants have entered into an agreement with regards to Tract 1 and that by the terms of the agreements, NRP (Operating) LLC (ACIN). has entered into a split agreement regarding this Tract and escrow regarding these individual conflicting claims detailed herein, is no longer required.
- 4.4 The Unit Operator gave notice to NRP (Operating) LLC (ACIN) and the applicants that the Board would consider its disbursement authorization at its hearing on July 21, 2009, and consider whether to: (1) amend the Pooling Order to provide for the disbursement a portion of funds on deposit in the Escrow Account attributable to Tract 1 as identified in the attached miscellaneous petition (2) delete the requirement that the Unit Operator place future royalties attributable to a portion of said Tract 1 and the interests of Applicants identified in the miscellaneous petition in the Escrow Account, and (3) continue the escrow account under this docket number because parties other than those seeking disbursement under this order are subject to continued payments in the escrow.
- 4.5 The Unit Operator filed the attached accounting for Subject Drilling Unit's Escrow Account with the Board ("Accounting").

5. **Findings:**

5.1. Va. Code 45.1-361.22.5 provides:

*The Board shall order payment of principal and accrued interests, less escrow account fees, from the escrow account to conflicting claimants within thirty days of receipt of notification of (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them or (ii) an agreement among all claimants owning conflicting estates in the tracts in question or any undivided interest therein. The amount to be paid to the conflicting claimants shall be determined based on the percentage of ownership interest of the conflicting claimants as shown in the operator's supplemental filing made part of the pooling order that established the escrow account, the operator's records of deposits attributable to those tracts for which funds are being requested, and the records of the escrow account for the coalbed methane gas drilling unit. The interests of any cotenants who have not entered into an agreement shall remain in the escrow account.*

5.2 Applicant has certified and represented to the Board that:

- (1) NRP (Operating) LLC on behalf of ACIN LLC and Jim M. Smith are the owners of the coalbed methane gas and oil acreage estate underlying VGOB Tract 1 of the Subject Drilling Unit;
- (2) Net interests attributable and to be disbursed to Applicants are shown in Table 1,

**VGOB Approved Disbursement**  
**VGOB 98-0616-0670-02**

Acreage Fraction	Acreage Interest	Split Agreement	Acres	% of Escrowed Funds
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**Table 1**

		<b>Tract 5</b>					
<b>Item</b>	<b>Tract</b>	<b>Disbursement Table</b>					
						12.91	
1	5	Jimmy M. Smith / Route 2, Box 120A / Coeburn, VA 24230		2.8700	75.0%	2.15	16.67%
2	5	ACIN / Attn: John H. Mooney / NRP Operating LLC / 5260 Irwin Road / Huntington, WV 25705		2.8700	25.0%	0.72	5.56%

**6. Relief Granted:**

For the reasons set forth in Paragraph 4 and 5 above, and based upon the Accounting and Table 1 above, the Escrow Agent is ordered to, within 10 days of receipt of this executed order to disburse funds for the unit and applicants detailed in Table 1 above.

Exhibit E to the Pooling Order, showing owners subject to escrow, is deleted and replaced with the Exhibit E attached to this order. Further, the Supplemental Order filed in this cause is hereby modified to delete the requirement that payments attributable to the conflicting coalbed methane gas ownership interests of those applicants indicated in Table 1 be deposited by the Unit Operator into the Escrow Account, **and**, because there are other owners subject to escrow under the Supplemental Order, the Escrow Agent is directed to continue the Escrow Account for Subject Drilling Unit. To the extent not specifically granted herein, any other or further relief is denied.

**7. Conclusion:**

Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and **IT IS SO ORDERED**.

**8. Appeals:**

Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo.

9. **Effective Date:** This Order shall be effective on the date of its execution.

DONE AND EXECUTED this 14 day of Sept, 2009, by a majority of the Virginia Gas and Oil Board.

Bradley C. Lambert  
Bradley C. Lambert, Chairman

DONE AND PERFORMED this 14 day of Sept, 2009, by an Order of this Board.

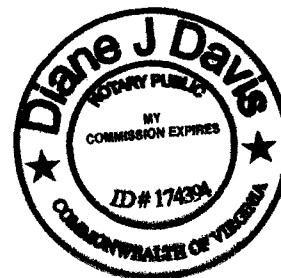
David E. Asbury Jr.  
David E. Asbury Jr.,  
Principal Executive to the Staff  
Virginia Gas and Oil Board

**COMMONWEALTH OF VIRGINIA )  
COUNTY OF RUSSELL**

Acknowledged on this 14<sup>th</sup> day of September, 2009, personally before me a notary public in and for the Commonwealth of Virginia, appeared **Bradley C. Lambert**, being duly sworn did depose and say that he is the Chairman of the Virginia Gas and Oil Board and **David E. Asbury Jr.**, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

Diane J. Davis  
Diane J. Davis  
Notary Public #174394

My commission expires: 09 / 30 / 2009



VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS: EQT Production Company on behalf of Jimmy M Smith  
and NRP (Operating) LLC on behalf of ACIN LLC.

DOCKET NUMBER: VGOB 98/06/16-0670-~~01~~ 02

RELIEF SOUGHT: Supplemental Order for Disbursement of Escrowed Funds  
on behalf of Jimmy M Smith and NRP (Operating) LLC on  
behalf of ACIN LLC.

LEGAL DESCRIPTIONS: Drilling Unit Number 703169 created by Board  
Order Dated June 16, 1998, VGOB 98/06/16-0670 in  
Dickenson County, Virginia.

HEARING DATE: July 21, 2009



MISCELLANEOUS PETITION

1. Parties: Applicant herein are: Jimmy M Smith, (hereinafter "Plaintiffs"), whose address is 148 Trig Smith H.L., Coeburn, VA 24230, and NRP (Operating) LLC, (hereinafter "Plaintiffs"), whose address is: 5260 Irwin Road, Huntington, WV, 25705.
2. Facts:
  - a. EQT was designated as the Operator and Applicants interests were Pooled in the 703169 Unit by Order of the Virginia Gas and Oil Board (hereinafter "Board") executed on June 16, 1998, pursuant to Docket No. VGOB 98/06/16-0670 and recorded in the Circuit Court Clerk's Office Dickenson County, Virginia on July 6, 2001, Deed Book 336, Page 639 (hereinafter "Order").
  - b. The Order and Supplemental Order required the Escrow Agent named and appointed therein to establish an interest-bearing escrow account for funds pertaining to the above-referenced Unit and subject to escrow pursuant to the terms of the Order.
  - c. The Order and Supplemental Order further required the Operator to deposit bonus and royalty payments with the Escrow agent which could not be made because the person(s) entitled hereto could not be made certain due to conflicting claims of ownership.
  - d. ACIN, LLC (NRP Operating LLC) was a conflicting claimant with the above-listed Plaintiffs with regard to Tract 3 as created by Board Order as VGOB 98/06/16-0670 is the applicable Tracts.

- e. To resolve this conflict, a Letter dated November 14, 2008, signed by John H Mooney, Vice President and Regional Manager of ACIN LLC, (NRP Operating LLC) is attached hereto and incorporated herein as Exhibit "A".
- f. The amounts deposited with the Escrow Agent regarding the Unit need to be determined and distributed accordingly.
- g. Any escrow amount, not yet deposited into the escrow account, held by Operator should also be determined, and distributed to Applicants/Plaintiffs herein, accordingly.
- h. Applicants/Plaintiffs herein do hereby request that the Board enter amended supplemental order for the Unit directing the Escrow Agent and the Operator to disburse to the aforesaid Plaintiff the funds attributable to the previous conflicting claim with ACIN, held in escrow for the VGOB number as listed above.
  - 1. The Applicants certify that the matters set forth in the application, to the best of their knowledge, information, and belief, are true and correct and that the form and content of the Application and conform to the requirements of relevant Board regulations and orders.
  - 2. Legal Authority: Va Code Ann. §45.1-361.1 et seq., 4 VAC 25-160, and such other regulations and Board orders promulgated pursuant to law.
  - 3. Relief Sought: Applicants request that the Board issue amended supplement order amending all prior orders affecting the Unit which amended supplement order will provide as follows:
    - a. Determining the amount of funds attributable to the Applicants/Plaintiffs herein.
    - b. Directing the Escrow Agent to determine the amount of funds attributable to Applicants/Plaintiffs herein, provide an accounting hereof, and disburse the funds on deposit with the Escrow Agent, including any applicable interest, pertaining to the interest in the Unit shown above for distribution.
    - c. Directing the Operator to determine the amount of funds attributable to the Applicants/Plaintiffs herein, provide an accounting thereof, and disburse the units in its hands, if any, subject to escrow but not then on deposit with the Escrow Agent, including any applicable interest, at the time of the Supplemental Order requested therein is executed, attributable to the Applicants/Plaintiffs herein for distribution.
    - d. Directing the Operator to disburse the funds, including any applicable interest, and provide an accounting thereof, which it may receive after the date of the execution of the amended supplemental order requested in the Application, if any,

attributable to the Applicants/Plaintiff herein, and to  
discontinue the payment of such funds into Escrow.

- e. Granting such other relief as is merited by the evidence and is  
just and equitable whether or not such relief has been  
specifically requested herein.

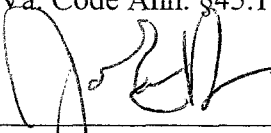
Dated this 19<sup>th</sup> day of June, 2009.

By:   
\_\_\_\_\_  
Petitioner

Address: Wilhoit & Kaiser  
220 Broad St, Ste. 210  
Kingsport, TN 37660

**CERTIFICATE**

The foregoing application to the best of my knowledge, information and belief is true and correct. Notice was given pursuant to Va. Code Ann. §45.1-361.19.

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Petitioner



**NRP (OPERATING) LLC**  
1035 Third Avenue • P. O. Box 2827  
Huntington, WV 25727-2827  
(304) 522-5757 • Fax (304) 522-5401

[jmooney@wnpplp.com](mailto:jmooney@wnpplp.com)

November 14, 2008  
File No. 94-9.1

*Keep*

Mr. Jimmy M. Smith  
148 Trigg Smith Hill  
Coeburn, VA 24230

Re: **Permanent Split of CBM Royalty**  
**Jimmy M. Smith, 3.1 acres**  
**Surface, Oil, Gas**  
**VC-3169**  
**Kenady District, Dickenson County, VA**

Dear Mr. Smith:

As you are aware, Equitable Production Company ("EPC") has drilled the referenced coalbed methane gas well on tracts of land (the "Property" or "Subject Tract"), in which ACIN LLC ("ACIN") is claiming ownership of coalbed methane due to its ownership of the coal underlying the Property and you own 3.1 acres of surface, oil and gas. The above has created conflicting claims as to the ownership of the coalbed methane gas on the Subject Tracts between ACIN LLC, as current coal owner, and you, as the owner of 3.1 acres of surface, oil and gas. A plat indicating the location of the well within the operating unit is enclosed for your reference. The Commonwealth of Virginia has not made a judicial determination of ownership of coalbed methane (CBM).

Due to our conflicting interests in the Subject Tract, EPC, as operator of the unit, has placed all royalty proceeds attributable to our conflicting interests into an escrow account. These royalty proceeds will remain in the escrow account until either a final legal determination of our conflicting claims to the coalbed methane gas is made or we reach an agreement on the division of the royalty proceeds. The most economical and expedient way to secure a release of the escrowed funds is for us to enter into an agreement which sets forth how the funds are to be distributed. Accordingly, in order to avoid the expense and time required to resolve the ownership question through the courts, ACIN proposes resolving this matter by the agreement described below. Such an agreement will allow us to request distribution of the proceeds presently held in the escrow account and direct payment of all future proceeds.

Mr. Jimmy M. Smith

Page 2

November 14, 2008

ACIN proposes that you receive disbursement of 75% of the proceeds held in the escrow account on the above-mentioned well and that ACIN receive disbursement of 25% of the proceeds held in the escrow account on the above-mentioned well. ACIN also proposes the same percentage division for all future production payments which may accrue to our conflicting interests from the above-mentioned well. ACIN will, at its sole expense, pursue the administrative process required to secure release of the proceeds held in the escrow account and will absorb all future costs of administering this Letter Agreement. None of these expenses and costs will be deducted from your 75% of the royalty proceeds. It is also agreed that the royalty from any future coalbed methane gas wells drilled upon the subject tract or upon other lands in which the subject tract is pooled therewith will be permanently split in the same 75%/25% proportion.

If this division of proceeds is agreeable with you, ACIN will diligently pursue the administrative processes required to secure release of the proceeds in the escrow account to you and ACIN. You will be provided with copies of the correspondence to EPC, requesting distribution of the escrowed funds as well as the directive to EPC to pay all future royalties and other benefits attributable to our conflicting interests in the same 75%/25% proportion.

This Letter Agreement effects a permanent division of the accrued, suspended or escrowed royalty payments and all future royalty payments on the above-mentioned well and future wells, which is binding upon you, your heirs and assigns and ACIN and its successors and assigns. By entering into this agreement, the parties agree to refrain from making any claim or bringing any suit against the other party attacking the other party's coalbed methane interests set forth in this Letter Agreement. It is expressly agreed by the parties hereto that the division of the accrued, suspended or escrowed royalty payments and all future royalty payments on the above-mentioned well and future wells shall remain subject to this Letter Agreement, regardless of any subsequent judicial determination of ownership of coalbed methane in the Commonwealth of Virginia. Provided, however, nothing contained in this Letter Agreement shall change or alter the parties' common law rights and liabilities or the legal title to their respective coal and gas estates.

By entering into this Letter Agreement, you confirm that you are the current record title owner of 3.1 acres of surface, oil and gas within the 58.77 acre unit containing Well VC

Mr. Jimmy M. Smith

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November 14, 2008

#3169. If you are not the current gas owner, please notify us immediately.

By accepting the terms and conditions of this Letter Agreement, you are directing EPC to disburse royalties in accordance with this agreement. It is understood and agreed that no other terms or conditions of your lease with EPC are affected by this Letter Agreement.

Please evidence your agreement to these terms by signing this Letter Agreement on the line indicated below and returning this Agreement to ACIN in the enclosed self-addressed, stamped envelope. If you have any questions, please do not hesitate to call me at the letterhead phone number.

This Letter Agreement remains valid for forty-five (45) days after your receipt of same.

Respectfully,


NRP (OPERATING) LLC  
On Behalf of ACIN LLC  
As Its Sole Member

  
John H. Mooney  
Vice President & Regional Manager

JHM/g

Encls.

AGREED TO AND ACCEPTED BY the above terms  
and conditions this 24th day of November, 2008.

  
JIMMY M. SMITH

BK 470PG 617

VGOB 98/06/16-0670

VC-3169

TRACT NO.	OWNER NAME and ADDRESS	SPLIT %	OWNER NET INTEREST	TOTAL NET ESCROW INTEREST	TOTAL AMOUNT IN ESCROW 5/31/2008 Bank Total - \$26871.01 Equitable Total - \$26871.01	OWNER % IN ESCROW 6/30/2008 16.65908056%	OWNER AMOUNT IN ESCROW 03/30/2009 \$4,476.46
1	Jimmy Mack Smith 148 Trig Smith H.L. Coeburn, VA 24230	75%	0.00457500	0.02746250			
1	ACIN ATTN: John H Mooney 1035 Third Avenue P.O. Box 2827 Huntington, WV 24727-2827	25%	0.00152500	0.02746250	Bank Total - 26871.01 Equitable Total - \$26871.01	5.55302685%	\$1,492.15



Form NSG-60-7

BK 470PG 619

EXHIBIT "E"  
VC-3169

<u>TRACT</u>	<u>LESSOR</u>	<u>LEASE STATUS</u>	<u>INTEREST WITHIN UNIT</u>	<u>GROSS ACREAGE IN UNIT</u>	<u>NET REVENUE INTEREST</u>
<u>Gas Estate Only</u>					
2	McKinley Stanley and Mary Jane Stanley Route 2, Box 129 Coeburn, VA 24230	Leased 244895.01	0.920000%	0.5400	0.00115000
6	Jimmy E. Lee and Linda Lee Route 2, Box 117 Coeburn, VA 24230	Leased 244830.02	2.495000%	1.4650	0.00311875
	David A Lee and Vickie Lee PO Box 574 Clintwood, VA 24228	Leased 244830.01	2.495000%	1.4650	0.00311875
7	Bernard Trigg Smith and Dianne Smith Box 105 Woodleaf, NC 27054	Deemed Leased	11.180000%	6.5700	0.01397500
<u>Coal Estate Only</u>					
2	ANR Coal Company PO Box 1871 Roanoke, VA 24008	Leased 244943.01	0.920000%	0.5400 after 120% payout	0.00115000 0.00172500
6	ANR Coal Company PO Box 1871 Roanoke, VA 24008	Leased 244943.01	4.990000%	2.9300 after 120% payout	0.00623750 0.00935625
7	ANR Coal Company PO Box 1871 Roanoke, VA 24008	Leased 244943.01	11.180000%	6.5700 after 120% payout	0.01397500 0.02096250

INSTRUMENT #090001704  
RECORDED IN THE CLERK'S OFFICE OF  
OICKENBON ON  
SEPTEMBER 18, 2009 AT 09:04AM

RICHARD W. EDWARDS, CLERK  
RECORDED BY: CJF